

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
BRIEF**



**74-1092**

---

ORIGINAL

United States Court of Appeals

For the Second Circuit

B  
H

---

OVERSEAS AFRICAN CONSTRUCTION CORPORATION, Employer,  
and ST. PAUL MERCURY INSURANCE COMPANY, Carrier,

*Plaintiffs-Appellants-Appellees,*

*against*

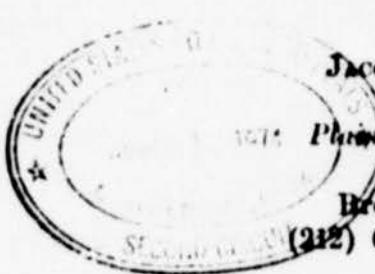
EUGENE McMULLEN, Dec'd, by GEORGE McMULLEN, Execu-  
tor, and JOHN D. McLELLAN, JR., Deputy Commissioner,  
United States Employees' Compensation Commission, Sec-  
ond Compensation District,

*Defendants-Appellees-Appellants.*

---

**BRIEF FOR  
PLAINTIFFS-APPELLANTS-APPELLEES**

---



JACOWITZ & SILVERMAN, P.C.

Attorneys for

*Plaintiffs-Appellants-Appellees*

44 Court Street

Brooklyn, New York 11201

(212) 625-2055

---

## TABLE OF CONTENTS

---

	PAGE
Statement of the Issues Presented for Review .....	1
Statement of the Case .....	2
Statement of Facts .....	3
Point I—The finding of jurisdiction under the Defense Base Act by the Deputy Commissioner and the Court below is erroneous as a matter of law .....	6
Point II—As a Development Loan Project, coverage was not mandatory within the provisions of the Defense Base Act and the issuance of the policy of insurance fails to establish a jurisdictional basis for the proceedings herein .....	10
Conclusion .....	11

## TABLE OF AUTHORITIES

### *Case:*

Alaska Airlines, Inc. v. J. J. O'Leary, 216 F. Supp. 540 (1963) .....	10
---	----

### *Statutes:*

Portions of Defense Base Act (42 U.S.C. §1651) .....	Add. 1
Portions of Mutual Security Act of 1958 .....	Add. 4
Administrative Procedure Act (5 U.S.C. 706) .....	Add. 9

## ADDENDUM

Portions of Defense Base Act (42 U.S.C. §1651) .....	Add. 1
Portions of Mutual Security Act of 1958 .....	Add. 4
Portions of 5 U.S. Code §706 .....	Add. 9
Excerpt from Background and History of Defense Base Act .....	Add. 10

# United States Court of Appeals

For the Second Circuit

---

OVERSEAS AFRICAN CONSTRUCTION CORPORATION, Employer,  
and ST. PAUL MERCURY INSURANCE COMPANY, Carrier,

*Plaintiffs-Appellants-Appellees,*

*against*

EUGENE McMULLEN, Dec'd, by GEORGE McMULLEN, Executor, and JOHN D. McLELLAN, JR., Deputy Commissioner, United States Employees' Compensation Commission, Second Compensation District,

*Defendants-Appellees-Appellants.*

---

## BRIEF FOR PLAINTIFFS-APPELLANTS-APPELLEES

---

### Statement of the Issues Presented for Review

First, Whether the Finding of Jurisdiction under the Defense Base Act by the Deputy Commissioner and the Court below was erroneous as a matter of law.

Second, Whether, as a Development Loan Project, coverage was not mandatory within the provisions of the Defense Base Act and therefore the issuance of the policy of insurance fails to establish a jurisdictional basis for the proceedings herein.

### **Statement of the Case**

Plaintiffs-appellants instituted this action on July 21, 1972, pursuant to Section 21 of the Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. Section 921) and the Defense Base Act (42 U.S.C. Section 1651, *et seq.*) to enjoin enforcement of a Compensation Award dated June 22, 1972, made by defendant John McLellan, Jr., in his official capacity as Deputy Commissioner, United States Employees' Compensation Commission, Second Compensation District, setting aside the order and for other relief.

Defendants moved the Court for summary judgment, dismissing the complaint herein, and granting judgment on defendant McMullen's counterclaim affirming the award of the Deputy Commissioner of the United States Employees' Compensation Commission, for statutory penalty for failure to pay or stay the award, and counsel fees to be awarded against plaintiffs for instituting these proceedings without reasonable ground, and the said motion having come on to be heard before the Honorable Charles L. Brieant, Jr., United States District Judge, and the Court thereafter on November 21, 1973, having handed down its memorandum and order directing the clerk to enter judgment, pursuant to Rule 58, Federal Rules of Civil Procedure, in favor of George McMullen, as Executor of the Last Will and Testament of Eugene McMullen, deceased, and against St. Paul Mercury Insurance Company, in the amount of \$14,994.60 and costs.

This is an appeal from the above order and judgment by the appellants.

### **Statement of Facts**

Claimant Eugene McMullen, since deceased was hired in New York by Overseas African Construction Corp., as Office Manager and Chief Accountant, pursuant to a written contract dated May 14, 1968.

He was assigned to a project at Chisimaio, Somalia Republic, Africa, during the period from May 1968 to December 1968. There, his Employer was engaged in a project supervised on a full-time basis, solely by the U. S. Army Corps of Engineers, and financed entirely by the Agency for International Development ("A.I.D.") of the United States Government, which paid out development loan funds directly to the contractor, for the account of the Government of the Somalia Republic, as partial performance was certified to it by the Corps of Engineers. (See Appendix p. 7a, Deputy Commissioner's Findings of Fact).

The loan was designated as "Chisimaio Port and Municipal Facilities Loan No. 649-H-002" (See Appendix p. 49a). The Employer was engaged in Phase II of that project. The initial element of scope of work was construction of a settling tank for water drawn from a nearby river, and installation of a pipe-line from the tank, to the town of Chisimaio, and the port. But the single project also included additions to existing port facilities at Serpenti Island, near Chisimaio. The scope of work there comprised a new cargo shed, an overhead conveyor to handle cargo, and placing of a quantity of rip rap as reinforcement of a breakwater. The work was difficult; the climate inhospitable. Tension arising out of thefts of equipment and inventory under his charge

combined with the long hours and hot humid weather to produce a neurodermatitis, on his hands, feet and elsewhere. He was treated locally, and then hospitalized in Nairobi General Hospital in Kenya on two occasions in August and December 1968.

Ultimately in December, McMullen was repatriated for reasons of health.

His skin condition never fully cleared up; he remained unemployed subsequent to January 1, 1969, until his death on January 30, 1972.

The policy issued by St. Paul provided that:

*"Item 3. Coverage A of this policy applies to the Workmen's Compensation law and any occupational disease law of each of the following states: Voluntary New York Except as Noted on ENDT. #3."*  
(Appendix p. 51a, Policy of Insurance)

*Endorsement No. 3 provides: "It is understood and agreed that Public Law 208 benefits apply as respects the A.I.D. Projects only."*

*Endorsement No. 5, subparagraph (2) provides:  
"Policy includes employees working in Chisimaio,  
Somalia \* \* \*."*

The Deputy Commissioner relied on Endorsement No. 3 and after an evidentiary hearing, made findings of fact.

He found specifically that:

*"Chisimaio, Somalia, Africa, \* \* \* is located in the Foreign Compensation District, established pursuant to the provisions of the Defense Base Act (42 USC 1651, et seq.,) which is an extension of the Longshore-*

men's and Harbor Workers' Compensation Act (33 USC 901, *et seq.*;) that said employment was pursuant to a contract to be performed outside the Continental United States, as defined in Section 1(a) of the Defense Base Act [42 USC 1651(a)] and that the liability of the employer for compensation under said Act was insured by the St. Paul Mercury Insurance Company." [sic] (Appendix p. 7a. Deputy Commissioner's Order)

He found that the nature of the employment was such as to come within the Defense Base Act jurisdiction, and was a public works contract involving harbor improvements. He also found:

"there is lack of substantial evidence to overcome the presumption that this claim comes within the provision of the Defense Base Act; that the Act does apply to this contract and the employment thereunder \* \* \*;

\* \* \* the policy, #C-3989, [of plaintiff St. Paul] can reasonably be held to apply to the employment of the claimant under the contract described herein and that policy provides the Defense Base Act insurance coverage required of the contractor-employer herein; that the term 'A.I.D. Project' in the policy could reasonably be a name for the Defense Base Act construction contract described herein, since payments for the work were made through and by A.I.D."

He also found that the disability "arose out of and in the course of the employment", and "constitutes an injury" within the statute.

The Deputy Commissioner made an award in the amount of \$11,250.00, plus \$1,245.50 for medical expenses. This sum, less a lien for counsel fees before the Commissioner in the amount of \$2,500.00, was directed to be paid forthwith to the Estate of the deceased employee.

## POINT I

**The finding of jurisdiction under the Defense Base Act by the Deputy Commissioner and the Court below is erroneous as a matter of law.**

It is submitted that upon examination of the record and the Defense Base Act (42 U.S.C. Section 1651 (a)(5)), the Deputy Commissioner and the Court below was without jurisdiction to enter an order and judgment in this case.

The Deputy Commissioner in his findings of fact established that the employment under the construction contract comes within the jurisdiction and subject to the provisions of the Defense Base Act. He further found, that a letter from the Agency for International Development, dated February 22, 1972 submitted into evidence, was insufficient by itself to overcome the statutory presumption of jurisdiction (Appendix p. 7a, Deputy Commissioner's Order and Award).

The Court below found that the findings of fact of the Deputy Commissioner was supported by substantial evidence (Appendix p. 28a).

The appellant respectfully shows to this Court that both the Deputy Commissioner and the Court below erroneously assumed that the question of jurisdiction is an issue of fact rather than an issue of law.

It is clear that in order for McMullen to recover under the provisions of the Defense Base Act (42 U.S.C. 1651), there must be a showing that he is within the provi-

sions of the aforesaid Act. We maintain that Section 1651(a)(5) of the Defense Base Act expressly excludes McMullen from its provisions.

Section 1651 is headed—Compensation for Disability or Death to Persons Employed at Military, Air, and Naval Bases, outside the United States—

Compensation authorized—Place of employment—

- (A) Except as herein modified, the provisions of the Longshoremen's and Harbor Workers Compensation Act, as amended, shall apply in respect to the injury or death of any employee engaged in any employment—
- (5) Under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (*other than title II of chapter II thereof \* \* \** (emphasis supplied, see Add. p. Add. 1).

The construction contract herein was between the Overseas African Construction Corp., appellant and the Republic of Somalia and financed by a Development Loan through the Agency for International Development. (Appendix p. 49a.)

Section 1651(a)(5) specifically precludes jurisdiction in the construction contract herein since it was financed as a Development Loan.

The relevant portion of the section states:

"\*\*\* where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof \*\*\*.)" (emphasis supplied, see Add. p. Add. 1)

Further indicia of the misapprehension by the Deputy Commissioner with regard to jurisdiction over the subject matter herein can be gained when one reviews the statements contained in a pamphlet issued on 5/1/63, by the office of Longshoremen's & Harbor Workers' Compensation Program, Bureau of Employees' Comp., U.S. Dept. of Labor, entitled *Background & History of Defense Base Act, War Hazards Comp. Act.* Specifically, the Bureau indicates that there is no coverage when there is a Development Loan Fund situation (see discussion as to DBA under 1958 legislation, par. 4) (See Add. p. 10).

We maintain that under the Mutual Security Act of 1954, as amended—Title II of Chapter II which established the Development Loan Fund expressly excludes this claim and precludes jurisdiction by the Deputy Commissioner and the Court below (see Mutual Security Act, Add. p. 4).

The Defense Base Act does not support the award and judgment granted to the defendant by the Deputy Commissioner or the Court below, since there was a lack of jurisdiction to act thereunder.

In fact, there is no jurisdiction as a matter of law, and the order and judgment should be set aside for error of law.

## POINT II

**As a Development Loan Project, coverage was not mandatory within the provisions of the Defense Base Act and the issuance of the policy of insurance fails to establish a jurisdictional basis for the proceedings herein.**

The policy of coverage in question issued by St. Paul Mercury Insurance Company was *voluntary in nature* since the project was financed as a Development Loan from A.I.D. Projects only. The employer herein *was not required* under the Defense Base Act to provide coverage on this job but did so on a voluntary basis, and under the terms of the defendants' contract agreeing to provide compensation insurance.

The voluntary coverage provided by the employer herein, should not be considered a concession that as a matter of law, the Defense Base Act conferred jurisdiction on the Deputy Commissioner.

As set forth in *Alaska Airlines Inc. v. J. J. O'Leary*, 216 F. Supp. 540 (1963) :

"The Court's attention has not been directed, however, to any authority which holds that the presumption applies where the issue is basically one of law, as in this case, where the facts are undisputed. Indeed, a review of the authorities discussing this statutory presumption discloses that it has been applied almost solely to the issue of whether an employee's injury or death arose in the course of his employment. \* \* \* Furthermore, the text of Section 920 itself contemplates application only to factual situations. The Court is therefore of the opinion that there is no presumption applicable to this case \* \* \*.

• • • Surely the interpretation of a statute is a question of law and not of fact. The Court is, therefore, of the opinion that the findings attacked here are questions of law freely reviewable without any presumption as to their correctness \* \* \*."

The appellant respectfully shows to this Court that both the Deputy Commissioner and Court below erroneously assumed that the question of jurisdiction is an issue of fact rather than an issue of law within the meaning of Section 706 of the Administrative Procedure Act (5 U.S.C. 706) (see Add. p. 9).

Therefore, it is clear that the exercise of jurisdiction by the Deputy Comissioner to hear and determine this case is a matter which this Court has the power to review and is not bound by the findings below.

It is the contention of the appellant that the Deputy Commissioner is without jurisdiction to enter an order of compensation in this case, since the Act (42 U.S.C. 1651 (a)(5)) precludes such authority as a matter of law.

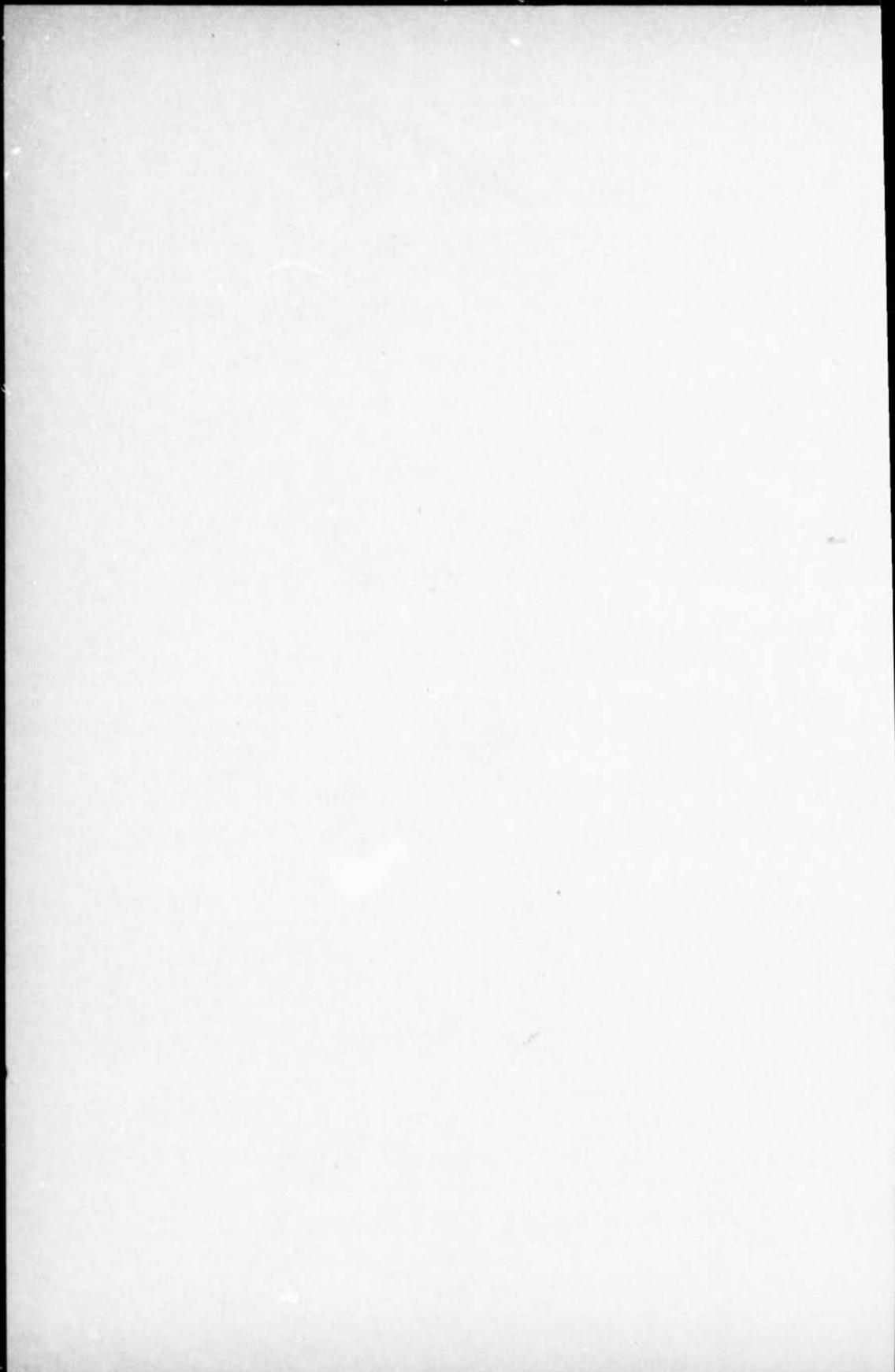
### **Conclusion**

**The order and judgment below should be reversed, in favor of the Overseas African Construction Corporation and St. Paul Mercury Insurance Company, and counterclaim dismissed.**

Respectfully submitted,

JACOWITZ & SILVERMAN, P.C.  
*Attorneys for*  
*Plaintiffs-Appellants-Appellees*

**ADDENDUM**



**Add. 1**

**Portions of Defense Base Act  
(42 U.S.C. 1651)**

**§1651. Compensation authorized—Places of employment**

(a) Except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act, as amended, shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any

## Add. 2

### *Portions of Defense Base Act*

subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)-(3) of this subsection, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this

Add. 3

*Portions of Defense Base Act*

section, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

• • •

9

Add. 4

**Portions of Mutual Security Act of 1958**

**MUTUAL SECURITY ACT OF 1958**

**PUBLIC LAW 85-477; 72 STAT. 261**  
**[H. R. 12181]**

**An Act amended further the Mutual Security Act of 1954, as amended, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

This Act may be cited as the "Mutual Security Act of 1958".

Sec. 2. The first section of the Mutual Security Act of 1954, as amended,<sup>30</sup> is amended by adding at the end thereof the following: "This Act is divided into chapters and titles, according to the following table of contents:

**"TABLE OF CONTENTS**

"CHAPTER I—MILITARY ASSISTANCE  
"CHAPTER II—ECONOMIC ASSISTANCE  
    "Title I—Defense Support  
    "Title II—Development Loan Fund  
    "Title III—Technical Cooperation  
    "Title IV—Special Assistance and Other Programs  
"CHAPTER III—CONTINGENCY FUND  
"CHAPTER IV—GENERAL AND ADMINISTRATIVE PROVISIONS"

**CHAPTER I—MILITARY ASSISTANCE**

*Military Assistance*

Sec. 101. Subsection (a) of section 103 of the Mutual Security Act of 1954, as amended,<sup>31</sup> which relates to military

<sup>30.</sup> 22 U.S.C.A. §1751 note.

<sup>31.</sup> 22 U.S.C.A. §1813(a).

## Add. 5

### *Portions of Mutual Security Act of 1958*

assistance, is amended by striking out "1958" and "\$1,600,-000,000" and inserting in lieu thereof "1959" and "\$1,605,-000,000", respectively.

### *Procurement Programs Relating to Military Assistance*

Sec. 102. Paragraph (1) of subsection (b) of section 105 of the Mutual Security Act of 1954, as amended,<sup>32</sup> which relates to conditions applicable to military assistance, is amended by inserting immediately before the period at the end ther eof the following: ", including coordinated production and procurement programs participated in by the members of the North Atlantic Treaty Organization to the greatest extent possible with respect to military equipment and materials to be utilized for the defense of the North Atlantic area".

### *Policy on Military Assistance to American Republics*

Sec. 103. Paragraph (4) of subsection (b) of section 105 of the Mutual Security Act of 1954, as amended, which relates to military assistance to American Republics, is amended by adding the following sentences at the end thereof: "The President annually shall review such findings and shall determine whether military assistance is necessary. Internal security requirements shall not normally be the basis for military assistance programs to American Republics."

---

32. 22 U.S.C.A. §1815(b).

## Add. 6

### *Portions of Mutual Security Act of 1958*

#### CHAPTER II—ECONOMIC ASSISTANCE

##### *Defense Support*

Sec. 201. Subsection (b) of section 131 of the Mutual Security Act of 1954, as amended,<sup>33</sup> which relates to defense support, is amended by striking out "1958" and "\$750,000, 000" and inserting in lieu thereof "1959" and "\$810,000, 000", respectively.

##### *Utilization of Funds in Special Accounts*

Sec. 202. Paragraph (iii) of subsection (b) of section 142 of the Mutual Security Act of 1954, as amended,<sup>34</sup> which relates to utilization of funds in Special Accounts, is amended by inserting immediately before the period at the end thereof the following: " : *Provided*, That if amounts in such remainder exceed the requirements of such programs, the recipient nation may utilize such excess amounts for other purposes agreed to by the United States which are consistent with the foreign policy of the United States: *Provided further*, That such utilization of such excess amounts in all Special Accounts shall not exceed the equivalent of \$4,000,000".

##### *Development Loan Fund*

Sec. 203. Title II of the chapter designated by paragraph (2) of section 501 of this Act as chapter II of the Mutual Security Act of 1954, as amended, which relates to the Development Loan Fund, is amended as follows:

(a) Amend section 202,<sup>35</sup> which relates to general authority, as follows:

33. 22 U.S.C.A. §1841(b).

34. 22 U.S.C.A. §1852(b) (iii).

35. 22 U.S.C.A. §1872.

Add. 7

*Portions of Mutual Security Act of 1958*

(1) Strike out subsection (a) and substitute the following:

“(a) To carry out the purposes of this title, there is hereby created as an agency of the United States of America, subject to the direction and supervision of the President, a body corporate to be known as the ‘Development Loan Fund’ (hereinafter referred to in this title as the ‘Fund’) which shall have succession in its corporate name. The Fund shall have its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. It may establish offices in such other place or places as it may deem necessary or appropriate.”.

(2) In subsection (b), strike out all preceding “is hereby” in the first sentence and substitute “The Fund”; strike out “he” in the first sentence and substitute “it”; strike out “and (3)” in the first sentence and substitute “(3)”; insert before the period at the end of the first sentence “, and (4) the possible adverse effects upon the economy of the United States, with special reference to areas of substantial labor surplus, of the activity and the financing operation or transaction involved”; strike out “from” in the second sentence and substitute “by”; insert after the third sentence “The provisions of section 955 of title 18 of the United States Code shall not apply to prevent any person, including any individual, partnership, corporation, or association, from acting for or participating with the Fund in any operation or transaction, or from acquiring any obligation issued in connection with any operation or transaction, engaged in by the Fund.”; and strike out the last two

## Add. 8

### *Portions of Mutual Security Act of 1958*

sentences and substitute the following new sentence: "The President's semiannual reports to the Congress on operations under this Act, as provided for in section 534 of this Act, shall include detailed information on the implementation of this title.".

(b) Amend section 204,<sup>36</sup> which relates to fiscal provisions, as follows:

(1) In subsection (b), substitute "Fund" for "President" in the first sentence and strike out "against the Fund" in that sentence; change "authorized" to "made available" in the second sentence; and insert "assets of the" before "Fund" in the third sentence.

(2) Strike out subsection (c) and substitute the following:

"(c) The Fund shall be deemed to be a wholly owned Government corporation and shall accordingly be subject to the applicable provisions of the Government Corporation Control Act, as amended.".

(c) Amend section 205,<sup>37</sup> which relates to powers and authorities, as follows:

(1) "MANAGEMENT" before "POWERS" in the heading of the section.

(2) Strike out subsections (a) and (b) and substitute the following new subsections:

"(a) The management of the Fund shall be vested in a Board of Directors (hereinafter referred to in this title as the 'Board') consisting of the Under Secretary of State for Economic Affairs, \* \* \*."

---

36. 22 U.S.C.A. §1874.

37. 22 U.S.C.A. §1875.

Add. 9

**Portions of 5 U.S. Code 706**

**§706. Scope of Review**

To the extent necessary to decision and when presented, the reviewing court shall decide *all relevant questions of law* (emphasis added), interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) *in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;*
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393 (emphasis supplied).

4

Add. 10

**EXCERPT FROM BACKGROUND AND HISTORY  
OF  
DEFENSE BASE ACT**

**WAR HAZARDS COMPENSATION ACT**

**Source: 85th Congress, Senate Report No. 1886  
(Calendar No. 1919) July 23, 1958**

**Benefit Laws mentioned herein include:**

**Defense Base Act (42 USCA 1651)**

• • •

**Office of Longshoremen's and Harbor  
Workers' Compensation Program  
Bureau of Employees' Compensation  
U. S. Department of Labor  
May 1, 1963**

• • •

**4. By amendment to the Mutual Security Act to extend  
the uniform workmen's compensation coverage of the De-  
fense Base Act to United States employees working abroad  
under any contract financed by the United States under  
the Mutual Security Act (other than the Development Loan  
Fund).**

• • •

## Affidavit of Service by Mail

In re:

Overseas African Construction Corp. v. McMullen

State of New York  
County of New York, ss.:

George Cummings

being duly sworn, deposes and says, that he is over 18 years of age.  
That on ..... 197....., he served <sup>2</sup> copies of the  
within ..... Brief & Appendix ..... in the above named matter  
on the following counsel by enclosing said three copies in a securely  
sealed postpaid wrapper addressed as follows:

William J. Kilberg

Solicitor of Labor

Joshua T. Gillelan, II

U. S. Department of Labor

14th & Constitution Ave., N. W.

Washington, D. C. 20210

Attorneys for John D. McLellan

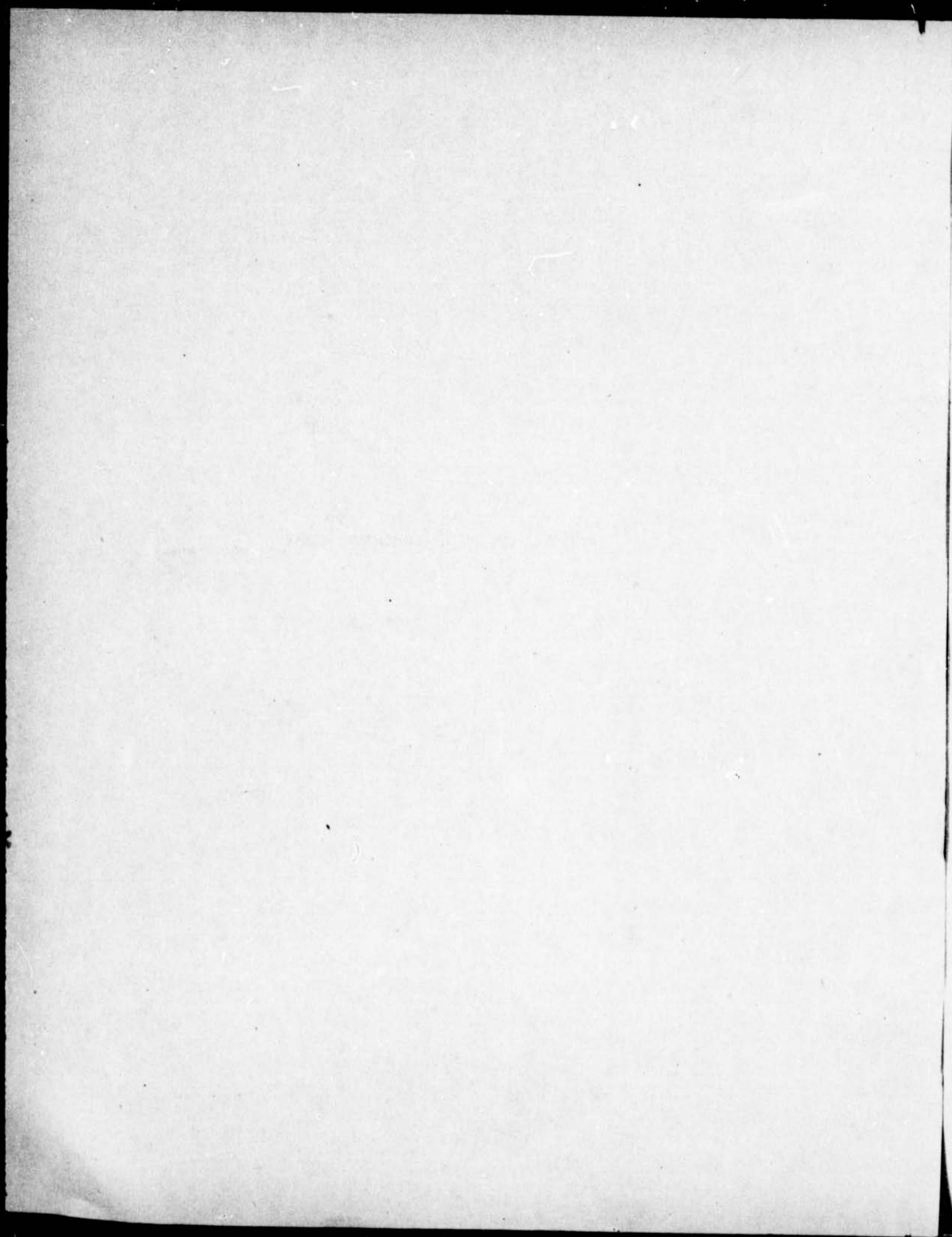
~~and depositing same in the official depository under the exclusive care and custody of the United States Post Office Department within the City of New York.~~

~~and depositing same at the Post Office located at Howard and Lafayette Streets, New York, N. Y. 10013.~~

George Cummings

Sworn to before me this 28<sup>th</sup>  
day of FEB. 1974.

JACK A. MESSINA  
JACK A. MESSINA  
Notary Public, State of New York  
No. 30-2673500  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1975



ORIGINAL

Service of 2 copies of the  
within Appendix is hereby  
admitted this 1 day of  
March 1974

Signed \_\_\_\_\_

Attorney for \_\_\_\_\_



Service of 2 copies of the  
within Brief is hereby  
admitted this 21 day of

Feb 1974

Signed Attley Adler

Attorney for Defendant

Service of 2 copies of the  
within Brief is hereby  
admitted this 21 day of

Feb 10 1974

Signed Attley Adler

Attorney for Defendant